

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Executive Air Taxi Corporation,)
a North Dakota Corporation,)

Plaintiff,)

vs.)

Case No. 1:04-cv-56

City of Bismarck, North Dakota, a)

municipal corporation; Mark Fetch;)

Dr. Steven J. Scherr, OnStar)

Management Inc.; Timothy J. Thorsen,)

Airport Operations Manager; Gregory)

B. Haug, Airport Manager; Robert H.)

Simmers, Simson Investment Company;)

Bryce Hill, City Commissioner with)

Airport Portfolio; William Sorenson,)

Former Mayor; Cook Leasing, Inc.;)

Michael Aarested, Aircraft Management)

Services dba Aircraft Maintenance)

Services; Alan Sauter; Capital Aviation;)

William Wocken, City Administrator,)

City of Bismarck,)

Defendants.)

**ORDER DENYING MOTION
TO STRIKE**

Before the Court is Executive Air Taxi Corporation's (EATC) motion to strike City of Bismarck's (Bismarck) second motion for summary judgment. Bismarck resists the motion.

The Court has reviewed the motion and Bismarck's response and concludes that while the motion is untimely, EATC's actions and inactions were the reason why Bismarck was not able to file the motion by the June 15, 2006, dispositive motion deadline. The Court will hear the motion and EATC should file a response addressing the merits of the motion. An extension of time to respond will not be granted as the Court will need time to consider the motion before

the September 25, 2006, trial date.

Accordingly, EATC's motion to strike is **DENIED**.

IT IS SO ORDERED.

Dated this 18th day of August, 2006.

/s/ Patrick A. Conmy

Patrick A. Conmy, Senior District Judge
United States District Court